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10/627,440	07/25/2003	Thomas Seth Belcher	03-0431.01	5371
21491	7590	11/01/2005		EXAMINER
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HUNTSVILLE, AL 35804			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/627,440  
Filing Date: July 25, 2003  
Appellant(s): BELCHER ET AL.

MAILED  
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Group 3700

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Belcher et al  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/17/05 appealing from the Office action mailed 2/11/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3057624	Bessett	10-1962
4060246	Ward	11-1977

4828268	Somerville	05-1989
4341386	Kleva	07-1982
2972833	La Grutta	02-1961

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 102***

1. Claims 1-7,9,11-17,19 rejected under 35 U.S.C. 102(b) as being anticipated by Bassett (3,057,624).

Bassett teaches a gaming plane (10) having plurality of tiles (Fig.1), tiles having at least three edges comprising means for interconnecting (Fig.5) in centripetal and centrifugal shapes, tiles made out of plastic material (2:2-5) are well known to be compatible with dry-erase markers, and the board providing a perception of a Cartesian grid (Fig.1). *The newly added limitation “substantially non-porous surface” is inherently disclosed due to use of the plastic material in Bassett reference.*

*Plastic is a well known substantially non-porous material, commonly known and used in making game boards, and used for playing games by marking with dry-erase markers.*

*Bassett clearly teaches overlaying plastic cladding (30) upon a substrate (28).*

***Claim Rejections - 35 USC § 103***

2. Claims 1-7,9,11-17,19 rejected under 35 U.S.C. 103(a) as being unpatentable over Bassett in view of Ward (4060246).

Bassett teaches a gaming plane (10) having plurality of tiles (Fig.1), tiles having at least three edges comprising means for interconnecting (Fig.5) in centripetal and centrifugal shapes, tiles made out of plastic material (2:2-5) are well known to be compatible with dry-erase markers, and the board providing a perception of a Cartesian grid (Fig.1).

*The newly added limitation "substantially non-porous surface" is inherently disclosed due to use of the plastic material in Bassett reference.*

*Plastic is a well known substantially non-porous material, commonly known and used in making game boards, and used for playing games by marking with dry-erase markers.*

Applicant might argue that Bassett does not expressly indicate a *substantially non-porous* dry-erasable surface.

*Ward teaches a plastic sheet of suitable hardness (5:13-15) for use with erasable marker liquid (5:35-36). In that Ward clearly demonstrates that plastic is a non-porous material and compatible with dry-erase markers. It also teaches that such boards are in a board game environment.*

*Plastic surfaces are dry-erasable and commonly used and recognized in the art area of board games.*

*Board game art area is a highly competitive area and using substantially non-porous dry-erase surface such as plastic facilitates using the same board over and over again saving cost, thus making the game less costly.*

*In order to save money it would have been obvious to use plastic material that are substantially non-porous and compatible to dry-erase markers by using the same board over and over again. One of ordinary skill in art at the time the invention was made would have suggested using plastic material that are substantially non-porous and compatible to dry-erase markers by using the same board over and over again for the purpose of money.*

*Bassett clearly teaches overlaying plastic cladding (30) upon a substrate (28).*

3. *Claims 4-7,9, 14-17,19 rejected under 35 U.S.C. 103(a) as obvious over Bassett in view Ward and furthering view of Somerville (4,828,268).*

*Bassett and Ward teach all limitations except that they do not expressly teach tiles in honeycomb shape. Somerville teaches tiles in honeycomb shape (Fig.6-7).*

*While rectangular and square boards are easy to make and store, numerous shapes including as demonstrated by Somerville are known in the art area for the purpose of attracting players who like to play with complicated shapes.*

*In order to make the game attractive, it would have been obvious to provide boards in the shape of honeycomb.*

*One of ordinary skill in art at the time the invention was made would have suggested providing boards in honeycomb shape to make the game attractive.*

4. *Claims 8,18 rejected under 35 U.S.C. 103(a) as being unpatentable over Bassett in view of Ward and Somerville as applied to claim 7 above, and further in view of Grutta (2,972,833).*

*Bassett, Ward and Somerville teach all limitations except that they do not teach a ball and socket connection for tiles.*

*Grutta teaches a ball and socket connection (Fig. 4).*

*Board games are popular travel companions. Board pieces that easily disconnected are likely to distract players away from playing as board pieces disassemble due to slightest movement or disturbance.*

*While some joints are easily disconnected others such as a ball and socket joint keeps the board secured and in one piece.*

*In order to secure board pieces properly and the shape of the board, it would have been obvious to use a ball and socket joint for the tiles. One of ordinary skill in art at the time the invention was made would have suggested using ball and socket means for connecting tiles.*

5. *Claims 10, 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Bassett in view of Ward and Somerville as applied to claim 5 above, and further in view of Kleva (4,431,386).*

*Bassett, Ward and Somerville teach all limitations except that they do not teach a magnetic connection for tiles.*

*Kleva teaches a magnetic connection (37,39).*

*Board games are popular travel companions. Board pieces that easily disconnected are likely to distract players away from playing as board pieces disassemble due to slightest movement or disturbance.*

*While some joints are easily disconnected others such as a magnetic joint keeps the board secured and in one piece.*

*In order to secure board pieces properly and the shape of the board, it would have been obvious to use a magnetic joint for the tiles. One of ordinary skill in art at the time the invention was made would have suggested using magnetic means for connecting tiles.*

#### **(10) Response to Argument**

On pages 7-8, the applicant argues that Bassett does not disclose board or the tile comprising the game board “proposed to be marked or drawn upon”. Applicant may note that “proposed to be marked or drawn” is the intended use of the board and does not further the apparatus in the claim.

Examiner takes the position that Bassett board pieces are made out of plastic (2:3) and plastic is widely used with dry-erase markers. Plastic is also a substantially non-porous material. To further support the examiner’s position the applicant may note at least the following patents using plastic boards/pieces with dry-erase markers: US 6402144, US 5741561.

Examiner further takes the position that whether Bassett suggests or not the marking of the board, it does not take away the physical quality of the board capable of being marked with dry-erase marker. At the core of Bassett board pieces are plastic pieces and compatible with dry-erase marker. This is well known in the art area of board games.

On pages 9-10, the applicant argues that manner of combining the references lacking motivation.

Examiner takes the position that the players are likely to mark the board advertently or inadvertently. Many a times players are seen to make notes or write rules of playing on the game board surface for easy accessibility of information.  
Plastic is a commonly used material that is durable due to the fact that it can be washed with water to remove marks made with liquid inks. Whether Bassett spells this reason or not, it remains a fact that Bassett board is "substantially non-porous", and could be used with dry-erase marker. Examiner also takes the position that a plastic surface is capable of being marked with various types of materials such as chalk, pencil etc. that can be placed in the category of dry-erase markers.

Ward on the other hand clearly demonstrates and supports the capability of a plastic board being used with markers that use ink that dries quickly. Such inks have highly volatile fluids with suspended particles and can be easily erased upon drying (5:40-46).

This clearly satisfies applicant's definition of dry-erase marker (page 11).

Further Applicant arguments on pages 15-16 are based on the same reasons as above.

Applicant's position is as explained above.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Vishu K. Mendiratta, Primary Examiner.

 10/28/05

Conferees:

Eugene, Kim , SPE



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Ben Layno, Primary Examiner

